REMARKS

The Official Action mailed May 2, 2008 asserts there are 2 distinct inventions (identified as Inventions I and II) claimed in the referenced application. According to the Office Action, claims 1-7, 11, 19 and 20 are drawn to a method of loading a plurality of food items in multiple layers, and claims 8-10, 12-18, and 21-27 are drawn to a system for loading food items in multiple layers. Applicants respectfully point out that claim 11 is directed to a system and not a method. Therefore it is respectfully submitted that claim 11 is encompassed by alleged Invention II.

In order to comply with the requirements of the Patent and Trademark Office, Applicants provisionally elect, *with traverse*, Invention II (claims 8-18, and 21-27) drawn to a system for loading food items in multiple layers.

DISCUSSION

Applicants respectfully submit that the restriction requirement is improper and examination of the patent application would be most expeditious by examining all pending claims together. The claims of Invention I relate to a method of loading a plurality of food items in multiple layers and the claims of Invention II relate to a system for loading food items in multiple layers. Thus, any search and consideration of the claimed subject matter of Invention I will likely overlap and encompass that for the claimed subject matter of Invention II. This does not mean that the claims necessarily stand or fall together, but the overlapping nature of the searches remains and mitigates against a restriction requirement.

Furthermore, the Examiner has not shown that a search and examination of the entrie application would, indeed, cause a *serious* burden, as required by Section 803 of the MPEP for proper restriction. In fact, a serious burden would arise only if examinamtion of the patent application were restricted to one of the claim groups. Filing additional patent applications containing the non-elected claims would unnecessarily burden (1) the Patent and Trademark Office, since it must assume the additional labor involved in examining two separate applications; and (2) the public, since it will have to analyze two patents to ascertain all of the claimed subject matter.

While the inventions defined by the claims may be independent or distinct, there is no demonstration that the search and examination of all the pending claims would entail a serious burden to the Examiner. In particular, it is submitted that any additional burden on the examiner in considering Inventions I and II together is not so serious as to require restriction, and therefore, Applicants respectfully request withdrawl of the restriction requirement.

CONCLUSION

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

It is believed that no fees are due for this submission. If, however, any fees are due to render this submission timely, please charge any fee deficiency to Deposit Account No. 50-0548.

Respectfully submitted,

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